stage where argument is possible as to the law on this matter. Whether one likes it or not, the law is settled. The treatment of default or repudiation by one party to a bilateral contract, as affecting the rights of the other party, has been enlarged. In previous editions this important branch of the subject was never fully treated; and indeed in the present edition, the discussion is not full.

The important cases, brought about by the great war and by the statutes passed for the defence of the realm, on impossibility and frustration of adventure, are inserted with the matter formerly contained in a chapter headed "Impossible Agreements" under the heading of "Conditions," together with other matter more usually placed under that heading. In making this change the author is undoubtedly following the language of the courts. In the reviewer's opinion, however, he is not indicating the true basis of the doctrine on which the decisions must rest. The defence which has generally passed under the name of Impossibility should properly be treated in connection with Mistake, for the former defence rests on the mistaken assumption by the parties of the future existence of certain essential facts; while the defence of mistake rests on the erroneous assumption of the present existence of such facts. It is likely to cause confusion to speak of such defences as conditions. They are created by the law and not by the parties, and are affirmative in their nature.

In his preface the author makes the following interesting statement: "Learned Americans are still engaged from time to time in valiant efforts to reduce the common-law rules of contract, and the doctrine of consideration in particular, to strict logical consistency. That quest is, in my humble judgment, misconceived. Legal rules exist not for their own sake, but to further justice and convenience in the business of human life; dialectic is the servant of their purpose, not their master." A reply is perhaps justified, and it may, without fear of offence, be made in reviewing the work of one who has done more than any English writer of his generation to promote reason and logic in the law.

No one will dispute that logic should be the servant not the master of practical convenience, and that where logic and convenience are clearly at war, logic must yield; but courts seem less likely at the present time than ever before to forget this. On the other hand, there is a real danger that courts in considering the special facts of cases before them, and what seem to be the particular equities of those cases, will forget the high practical value of logic. Unless logic can in the main be trusted, no one can safely advise on the new problems which are constantly arising. It is probable that bad reasoning or antiquated precedent is the cause of quite as many decisions which are out of line with general principles as any arguments from practical convenience, and no assumption should be made that because a decision is illogical it must therefore be practically convenient. The United States have at least one advantage over England as partial compensation for the multiplicity and diversity of decisions which the division of this country into many separate jurisdictions involves. Decisions which are wrong in principle are somewhat easier to overthrow, and escape from antiquated precedents is a little less difficult.

SAMUEL WILLISTON.

WAR POWERS OF THE EXECUTIVE IN THE UNITED STATES. By Clarence A. Berdahl. University of Illinois Studies in the Social Sciences, Vol. IX, Nos. 1 and 2. Urbana, Ill.: The University of Illinois. 1920. pp. 296.

As the Constitution deals with executive power in very general terms, and as the literature on the subject is scanty, there is ample room for this pamphlet. The author has not had access to an adequate library; but the citations show that he has made conscientious use of the books at his disposal. His method is to state the various views of others, rather than those held by himself; and the result occasionally (*e. g.*, pp. 15–18 and 182–184) is somewhat obscure.

The author has analyzed the subject well, and has then covered, so far as the facts seem to permit, the several heads of the analysis. Thus it has happened that in several instances he has covered topics usually unnoticed. For example (pp. 37–42), he has explained well the distinction between treaties and exchanges of notes, and (pp. 143–148) he has given as to military commissions more information than is easily accessible elsewhere; and (pp. 148–151) he has given interesting details and generalizations as to the power of pardon. He does not, however, have full acquaintance with all the pertinent details regarding executive control in the World War. For example, he does not mention that exchange of notes upon which was based the exclusive jurisdiction of American courts-martial over offenses committed in France by members of the American armed forces or by persons accompanying them, and he does not mention the executive proclamations regulating aircraft.

In the discussion of courts-martial (pp. 142–154), it is noteworthy that the very important case of *Grafton* v. *United States*, 206 U. S. 333, is not mentioned. Such other omissions as have been discovered are doubtless due to inaccessibility of books.

The pamphlet is worthy of revision, enlargement, and republication.

EUGENE WAMBAUGH.

LEADING CASES IN COMMON LAW. By Ernest Cockle and W. Nembhard Hibbert. London: Sweet and Maxwell, Ltd. 1921. pp. xxxiv, 901.

To bring together in a single volume a collection of cases covering the whole field of the common law, is, of course, an impossible task. Even when, as here, the subject matter is confined to the private law of a single jurisdiction, any such volume is sure to be superficial in the extreme. But this ponderous book is not only superficial and incomplete; it is not even well worked out as to those subjects which it does cover. The cases, while in the main well selected, are hopelessly mutilated, so as to become a mere collection of *dicta;* and the typography is such as to cause the reader to writhe. Moreover, the arrangement of the subjects treated is peculiar. Thus, Contracts, Torts and Damages are grouped together as "The Law of Things"; while under the subhead of Contracts are included Agency, Carriers, Gifts and "Clubs." The law of property, distributed in procedural pigeon-holes, is treated under the section on Torts.

Apparently the volume was prepared for the use of English law students. To an American reviewer, accustomed to the scholarly case-books prepared by law professors, as used in American law schools for the last thirty years, the reasons for publishing such a book are difficult to comprehend. It is certain that the advantages of the case system cannot be gained by studying this hybrid of case-book and text-book; while if intended as a manual for English practitioners, it seems too elementary to be of value.